

ZONING BOARD OF APPEALS MINUTES

April 16, 2013 – Special Meeting
Delta Township Administration Building

I CALL TO ORDER

Chairman Reed called the meeting to order.

II PLEDGE OF ALLEGIANCE

Chairman Reed led the Board and others present in reciting the Pledge of Allegiance to the Flag.

III ROLL CALL

Members Present: Arking, Barnhart, Hicks, Newman, Parr, Reed

Members Absent: Laforet

Others Present: Chris Gruba, Assistant Planner and Community Development
Director Mark Graham

IV SET AND ADJUST AGENDA

Mr. Reed asked if there were any changes to the agenda.

Mr. Gruba said there were no changes.

V APPROVAL OF MINUTES

March 12, 2013 Regular Meeting

**MOTION BY PARR, SECONDED BY BARNHART, THAT THE MARCH 12, 2013
REGULAR MEETING MINUTES BE APPROVED AS PRESENTED. VOICE
VOTE. CARRIED 6-0.**

VI OLD BUSINESS

1. **CASE NO. V-13-1-25**: Anthony Freese, 4711 W. Mt. Hope, Lansing, MI. 48917, is requesting a variance from Section 24.3.0 (C) of the Zoning Ordinance in order to reestablish a non-conforming use.

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Mr. Gruba stated that this case was before the Board at their March 12th meeting at which time the request was tabled. Since that time, staff had prepared a second staff report that further addressed the applicable sections of the Zoning Ordinance.

Mr. Graham said in his March 25th memo to the Board, he had attempted to address the major sections of the Zoning Ordinance that pertained to non-conforming uses and upon further review, it was his opinion that a change from one non-conforming use to another non-conforming use was not applicable to this case. It was also his opinion that the Board couldn't use the standard criteria for the granting of the variance due to the fact that one of the criteria stated that "the Board shall not permit the establishment within a district of any use which is not permitted by right or special land use permit" because the applicant had requested a residential use within an industrial zoning district. Mr. Graham noted that he had drafted a motion for approval, as well as a motion for denial, for the Board's consideration, as well as alternatives to the granting of a variance. Mr. Graham said he had also attempted to determine how many of these types of requests the Township may receive in the future from other property owners that were in similar situations. Mr. Graham concluded his review of the case by including a review of the Lathrup Village Zoning Ordinance which allowed non-conforming uses via a special land use permit review process.

Mr. Reed asked if there was anyone in the audience who would like to speak on this matter.

Anthony Freese, 4711 W. Mt. Hope, said he was present this evening to hear what the decision of the Board would be. Mr. Freese acknowledged that he had received a copy of Mr. Graham's report of March 25th.

MOTION BY BARNHART, SECONDED BY HICKS, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 6-0.

Ms. Parr felt it would be very difficult to locate an industrial type use on the subject parcel due to its small size and due to the fact that the next door neighbor was not willing to sell their property. She questioned if there was a way to interpret the term destruction to also include demolition.

Mr. Hicks felt Mr. Graham's memo pointed out some very compelling points relative to bringing properties into compliance and that the most significant point for him was the idea that the Board may never get to that point if they made exceptions relative to the way the ordinance was drafted. Mr. Hicks said with respect to construction, it would be a broad and liberal interpretation to suggest that destruction would be something other than an "Act of God" and that the 50% replacement threshold for anything other than the "Acts of God" wouldn't be applied because the purpose of the language in the ordinance was that someone should be able to rebuild if a tornado came through and destroyed up

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to 50% or less of their home and if more than 50% of the structure was destroyed, the structure shall be brought into conformity. He wasn't sure the ordinance intended to reward destruction by virtue of allowing the reconstruction of something other than what would be an "Act of God" or an accidental demolition or destruction of the property. He felt Mr. Graham's memo also raised interesting points in regards to whether or not the Board wanted to consider alternatives to granting a variance such as Zoning Ordinance amendments which was similar to how the Board handled the variance requested by Reno's which was the proper venue to make those types of changes as opposed to the Zoning Board of Appeals which was more of an appellant board.

Mr. Arking noted that Mr. Graham's memo reinforced his personal view that one of the major concepts of zoning was that grandfathered non-conforming uses tend not to be sustainable and they were expected to ultimately wither in favor of conforming uses. He agreed with Mr. Hicks that there were other measures that could be taken by the Township Board, but he didn't know how the Zoning Board of Appeals could approve the requested variance given the provisions of the Zoning Ordinance regarding non-conforming uses.

Mr. Hicks questioned if staff considered the variance request more of an appeal now that the Zoning Administrator had made an interpretation that a variance couldn't be granted.

Mr. Graham didn't feel the standard criteria for granting a variance would apply in this case because it clearly stated that the variance shall not allow the establishment of a use not permitted in the district and that other measures could be available such as an ordinance amendment. He pointed out that there were 25 residential homes on industrially zoned parcels within the Township and that the Township Board may feel that an amendment to the ordinance was warranted due to the fact that the problem wasn't going to go away.

Mr. Hicks agreed with Mr. Graham that the issue wasn't going to go away given the fact that there were several non-conforming properties and that this was not a singular incident and that at some point, it would have to be dealt with. He felt that point would be more compelling at the Township Board level. Mr. Hicks questioned how the Zoning Board of Appeals made a final determination on this matter when a variance couldn't be granted for a non-conforming use.

Mr. Graham felt another option would be that the Board could support the interpretation of the Zoning Administrator that a Certificate of Zoning Compliance can not be granted to rebuild a non-conforming use. Mr. Graham noted that Mr. Freese could then appeal the Zoning Administrator's interpretation to the Zoning Board of Appeals as per Section 23.2.0 A (1) of the Ordinance.

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Mr. Hicks felt the applicant could either affirm or uphold the Zoning Administrator's interpretation and that the Board could make their own interpretation to be somewhat in conformance with Mr. Graham's or completely different. However, he felt if the applicant took that approach, he felt they should amend their original application so that it was an appeal and not a variance request.

Mr. Freese said it wasn't his idea to file a rezoning request and that that was what he had been instructed to do by staff. Mr. Freese said he didn't want to refile his application and that he just wanted a decision as to whether he could rebuild his home.

Mr. Reed inquired as to whether or not the Board had already set precedence by granting a variance in the Slyvertooth case which authorized the reestablishment of a non-conforming use as opposed to having the Township Board address this issue so that the Zoning Board doesn't continue receiving these types of requests. Mr. Reed agreed with Ms. Parr that it would be difficult to accommodate an industrial use on a 130 foot wide parcel and in addition, did the Township want to have a vacant building on the parcel for an indefinite period of time.

Mr. Hicks said he was suggesting that the decision that was made in 1998 on the Slyvertooth case was without authority to do so and that in terms of precedence, this Board wasn't bound by a decision that was made in 1998. Mr. Hicks said the reason why he had suggested that the Board table the request and for the applicant to amend his application for an appeal was to prevent the applicant from having to pay another application fee and that it would show that the applicant had exhausted all of his administrative remedies if the case went to Circuit Court. He also didn't want a decision rendered that would ultimately prohibit the applicant from coming back to the Zoning Board of Appeals for one year if the Township Board didn't provide the relief that the applicant had requested.

Ms. Parr noted that the Zoning Board of Appeals granted a variance for the applicant's pole barn in 2007 with the understanding that they would be able to rebuild their home in the future and that the applicant had made other improvements to the property in order to preserve the residential integrity and follow all of the rules which not everyone did. Ms. Parr didn't feel the Zoning Board of Appeals would be setting precedence by granting a variance due to the fact that the Board would be asked to make reference to the fact that there were several residential homeowners on industrially zoned parcels that were in this same situation.

Mr. Reed agreed with Ms. Parr and for those members who were not on the Board when the variance for the pole barn was granted, it was intended that the applicant eventually would rebuild their home.

Mr. Arking asked why a variance was necessary for the pole barn.

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Mr. Graham said a setback variance was needed for the pole barn.

Mr. Hicks didn't feel the Zoning Board of Appeals could deny someone a variance due to what they had intended to do in the future. He reiterated the fact that this wasn't a Board of original jurisdiction and what the Zoning Board of Appeals had before them this evening was an application for a variance to rule on, but he didn't agree that the Board could rule on Mr. Graham's interpretation because he had not rendered an official interpretation as the Zoning Administrator. He noted that this Board could not grant a use variance.

Mr. Reed questioned if the applicant would be able to rebuild their home if the Board approved the request this evening.

Mr. Graham said it was his opinion that the Board could approve the request this evening absent someone objecting to it in a court of law. He agreed with Mr. Hicks that the Silvertooth decision was not binding on the Zoning Board of Appeals.

Mr. Newman noted that he wasn't on the Board when a variance was granted to the applicant in 2007, but if the applicant had stated that they were going to build a pole barn with the intent of constructing a new dwelling in the future, he questioned whether the pole barn started the process of the intent to build a new dwelling in the future.

Mr. Graham said as Township Zoning Administrator, he had approved numerous accessory buildings for residential structures in the industrial tract because those structures could be used for industrial type uses in the future, but staff never asked them what their intent was. He noted that staff only looked at whether it was a permitted use within that zoning district. Mr. Graham noted that the pole barn was an accessory building permitted for industrial uses, as well as residential uses which was why staff allowed the pole barn to be constructed.

The Board continued discussion on whether granting a variance this evening would set a precedence due to the fact that the applicant had made his intent known at the time a variance was granted in 2007 for a pole barn and that this matter would be addressed by the Township Board in the future.

Mr. Hicks felt the Zoning Board of Appeals would be setting precedence because as per Basic Condition #2, the variance shall not permit the establishment within a district of any use which is not permitted by right or special use permit, couldn't be satisfied. He didn't feel that Mr. Graham, as Township Zoning Administrator, had rendered a decision this evening and he didn't know how the Board could render a decision this evening.

Mr. Arking questioned if the applicant could be refunded the application fee if they withdrew their request.

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Mr. Graham said he wouldn't have a problem refunding the applicant's money because the Township didn't incur the advertising cost that they typically incurred and that it would force staff to look into this situation across the whole industrial zoning district and bring this matter of non-conforming uses to the attention of the Township Board.

Mr. Hicks felt it would be beneficial for the applicant if the Board tabled this matter indefinitely and have this matter addressed by the Township Board for other possible solutions.

Mr. Reed inquired as to whether the applicant could move forward if the variance was granted this evening and ask that the Township Board address the remaining properties within the industrial tract.

Mr. Graham felt the applicant could move forward if the variance was granted, but the Board may not feel any incentive to address the non-conformities issue if the Zoning Board of Appeals had already granted a variance and the Township Board may question why they were getting involved when precedence had already been established.

Mr. Reed noted that it could also be considered that the Zoning Board of Appeals had already established precedence and could continue to do so for the remaining properties within the industrial tract and therefore, the Township Board may be approving the non-conformity by not addressing the issue. He felt if the Township Board were to address the non-conformity issue, the Zoning Board of Appeals could allow the applicant to move forward and then have the Board address this matter so that it could be resolved.

Mr. Hicks felt the reason why the Zoning Board of Appeals was in this position this evening was due to the action the Zoning Board of Appeals took in 2007. Had the Zoning Board of Appeals taken the steps in 2007 that were being discussed this evening, the Zoning Ordinance probably would have been amended to address this type of issue.

Mr. Reed felt that was all the more reason why the Zoning Board of Appeals should approve the variance request this evening so that the Township Board would have to address this matter.

Mr. Arking questioned what would happen if the roles were reversed and an existing industrial use that was surrounded by residential homes wanted to expand their use.

MOTION BY PARR, SECONDED BY BARNHART, THAT THE DELTA TOWNSHIP ZONING BOARD OF APPEALS APPROVE THE REQUEST OF TODD FREESE IN CASE NO. V-13-1-25 TO DEMOLISH THE EXISTING SINGLE FAMILY HOME AND CONSTRUCT A NEW HOME ON THE SUBJECT PARCEL AT 4711 W. MT. HOPE HIGHWAY FOR THE FOLLOWING REASONS:

- 1. SECTION 24.3.0 A OF THE ZONING ORDINANCE PERMITS THE ZONING BOARD OF APPEALS TO AUTHORIZE THE ALTERATION OR EXPANSION OF NON-CONFORMING BUILDINGS UPON A FINDING THAT SUCH ALTERNATION OR EXTENSION SHALL NOT INCREASE THE EXTENT OF THE NON-CONFORMITY AND SHALL SATISFY ALL SITE DEVELOPMENT REGULATIONS WHICH ARE APPLICABLE. THE PROPOSED REPLACEMENT OF AN EXISTING SINGLE FAMILY HOME WITH ANOTHER SINGLE FAMILY HOME WILL MAINTAIN THE EXISTING RESIDENTIAL USE OF THE PROPERTY AND NOT INCREASE THE EXTENT OF THE NON-CONFORMITY. THE APPLICANT HAS SUBMITTED A PLOT PLAN FOR THE PROPOSED HOME WHICH INDICATES THAT THE NEW BUILDING WILL SATISFY ALL OF THE APPLICABLE SITE DEVELOPMENT REGULATIONS FOR THE I2 ZONING DISTRICT AS STIPULATED IN SCHEDULE C OF THE ZONING ORDINANCE.**
- 2. SECTION 24.3.0 B (2) OF THE ORDINANCE STATES THAT NON-CONFORMING BUILDINGS MAY BE ALTERED UPON A FINDING BY THE ZONING BOARD OF APPEALS THAT THE GRANTING OF THE APPROVAL WILL NOT HAVE A NEGATIVE IMPACT ON NEIGHBORING PROPERTY. THE PROPOSED BUILDING WILL IMPROVE THE APPEARANCE OF THE PROPERTY AND BE COMPATIBLE WITH THE SINGLE FAMILY HOMES LOCATED IMMEDIATELY TO THE WEST AND ON THE NORTH SIDE OF MT. HOPE HIGHWAY.**
- 3. THE SUBJECT PARCEL COULD NOT REASONABLY BE EXPECTED TO BE USED FOR AN INDUSTRIAL USE DUE TO THE FOLLOWING FINDINGS:**
 - a. THE WIDTH OF THE PROPERTY IS 130 FT. SCHEDULE C OF THE ORDINANCE MANDATES A MINIMUM WIDTH OF 150 FT. FOR I2 ZONED PROPERTIES.**
 - b. THE MINIMUM SIDE SETBACK REQUIREMENTS FOR A BUILDING IN THE I2 DISTRICT ARE 25 FT. WHICH WOULD RESULT IN A MAXIMUM BUILDABLE WIDTH OF 80 FT. FOR AN INDUSTRIAL BUILDING.**
 - c. THE PARCEL HAS AN AVERAGE DEPTH OF 940 FT. WHICH RESULTS IN A LOT WIDTH TO DEPTH RATIO OF 7 TO 1. THE TOWNSHIP'S LAND DIVISION ORDINANCE (SECTION 18.24. (1) DOESN'T PERMIT NEW PARCELS TO EXCEED A RATIO OF 1 TO 4. THUS, THE SUBJECT PARCEL IS LONG AND NARROW WHICH WOULD SEVERELY RESTRICT THE PLACEMENT OF**

INDUSTRIAL BUILDINGS, PARKING & STORAGE AREAS, AS WELL AS THE PLACEMENT OF UTILITIES ON THE PROPERTY.

- d. THE PARCEL IS ENCUMBERED BY AN EXISTING UTILITY EASEMENT OVER THE NORTHERN 45 FT. OF THE PROPERTY.**
- 4. THE APPLICANT PURCHASED AN ADDITIONAL 40 FT. OF PROPERTY, BEING APPROXIMATELY .90 ACRES, IN 1996 AND ATTACHED THE PROPERTY TO THE “ORIGINAL” PARCEL WHICH BROUGHT THE PROPERTY INTO COMPLIANCE WITH THE MINIMUM LOT AREA REQUIREMENT (2 ACRES) OF THE I2 ZONING DISTRICT.**
- 5. ON APRIL 24, 2007, THE ZONING BOARD OF APPEALS GRANTED MR. FREESE A SIDE YARD SETBACK VARIANCE TO PERMIT THE CONSTRUCTION OF A 1500 SQ. FT. ACCESSORY BUILDING ON THE SUBJECT PARCEL. MR. FREESE MADE IT CLEAR ON THE RECORD THAT HE WAS ATTEMPTING TO PRESERVE THE RESIDENTIAL CHARACTER OF THE PROPERTY BY LIMITING TREE REMOVAL, USING THE NEW BUILDING FOR ONLY PERSONAL USES, AND REPLACING AN OLD GARAGE WITH A NEW GARAGE. PERMITTING THE REPLACEMENT OF THE HOUSE IN 2013 WOULD BE IN KEEPING WITH THE PRECEDENT THE ZONING BOARD OF APPEALS SET IN 2007 TO PERMIT REPLACEMENT OF THE RESIDENTIAL GARAGE.**

ROLL CALL VOTE. CARRIED 4-2 (ARKING AND HICKS).

VII. NEW BUSINESS – None

VIII. OTHER BUSINESS – None

IV. STAFF COMMENTS - None

Mr. Graham said he intended to follow up with the Township Board and bring the recurring non-conformity issues within the industrial tract to their attention.

Mr. Graham noted that a variance would be forthcoming for the redevelopment of the former BP gas station site located north of Cracker Barrel.

X. BOARD COMMENTS

Mr. Barnhart commended Mr. Gruba for the good job he had done.

XI. ADJOURNMENT

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Chairman Reed adjourned the meeting at 7:02 p.m.

DELTA CHARTER TOWNSHIP

Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink